
(2009) 1 OLR 41

Orissa High Court

Case No: None

Banki Muhan
Ramachandi Thakurani

APPELLANT

Vs

Hajuri Prafulla Chandra
Khuntia and Others

RESPONDENT

Date of Decision: Oct. 31, 2008

Acts Referred:

- Contempt of Courts Act, 1971 - Section 20
- Limitation Act, 1963 - Section 5

Citation: (2009) 1 OLR 41

Hon'ble Judges: L. Mohapatra, J; I. Mahanty, J

Bench: Division Bench

Judgement

L. Mohapatra, J.

This contempt application has been filed alleging disobedience of the order dated 27.6.2000 passed in Misc. Case No. 1555 of 2000 arising out of O.J.C. No. 5705 of 1999.

2. The writ application has been filed challenging the order of the O.E.A. Collector, Puri in Annexure-1 as well as Member, Board of Revenue, Cuttack in O.E.A. Revision No. 9 of 1995. In the writ application the above Misc. Case was filed for grant of injunction and by order dated 27.6.2000 this Court considering the nature of dispute restrained the contemnors from alienating the disputed land till disposal of the writ application. In the contempt petition, it is alleged that the said order was passed in presence of learned Counsel appearing for the contemnors and therefore, it is construed to be within the knowledge of the contemnors. It is also alleged that the contemnors after receiving the order and being well aware about the direction given by this Court executed the registered sale deed on 27.12.2002 in respect of the disputed plot namely, Hal Khata No. 450/7, Hal Plot, No. 1029 covering an area of Ac.0.261 decimals corresponding to Sabik Plot No. 409 (R) and Sabik Plot No. 407(P) covering an area of Ac.0.51 decimals

corresponding to Hal Plot No. 1030 in total Ac.0.312 decimals. After receipt of notice in the contempt, a reply has been filed by the contemnors. In the said reply it is stated that at the time of execution of the sale deed they were not aware of the order dated 27.6.2000 passed by this Court. Only on 3.2.2000 notices were received by them in the writ application on the question of admission whereafter they engaged Shri Ramesh Chandra Rath, Advocate on their behalf. After receipt of notice in the contempt application, it was found that on 29.2.2000 Shri Ramesh Chandra Rath and Prafulla Kumar Rath, Advocates filed vakalatnama on their behalf and after their appearance, Misc. Case No. 1555 of 2000 was filed by the petitioner but copy was not served. By order dated 12.5.2000 the Court directed to serve a copy of the Misc. Case on the counsel appearing for them with in three days, but the same was not done. In the meantime, the petitioner changed his counsel by engaging late S. Mishra-II by disengaging the previous counsel. After appearance of late S. Mishra-II on behalf of the petitioner, the counsel appearing for the contemnors without disclosing about filing of Misc. Case No. 1555 of 2000 informed them about their unwillingness to conduct the case and gave consent. In July, 2000 the contemnors executed a fresh vakalatnama in favour of Shri N.C. Pati, Advocate to appear on their behalf. Though on 27.6.2000 the said Misc. Case was taken up for orders, it appears that the said order was passed in absence of the learned Counsel appearing for the contemnors and the appearance of Shri N.C. Pati and his associates had not been printed in the cause list as a result of which, they could not appear on the said date. Therefore, it cannot be said that the said order was passed in presence of the learned Counsel appearing for the contemnors. The order dated 27.6.2000 was not intimated to the contemnors. Had they been aware of the said order, they would not have executed the sale deed. In course of hearing of this contempt petition, another Bench of this Court directed the contemnors to deposit the sale price under the sale deed in favour of the Court by way of Demand Draft/Cheque. In pursuance of the said order, a sum of Rs. 2,50,000/- was deposited by way of cheque on 14.9.2007 and further sum of Rs. 4,000/- was undertaken to be deposited by way of cheque. On 27.9.2007 a further sum of Rs. 4,000/- was deposited by way of cheque and it was directed that the cheques shall be renewed from time to time.

3. The question to be decided in this contempt application is as to whether the contemnors have wilfully and deliberately violated the order passed by this Court on 27.6.2000 by executing a sale deed in spite of the injunction order. The records of the writ application clearly show that the contemnors engaged Advocates to appear on their behalf. After appearance of late S. Mishra-II, Advocate on behalf of the petitioner, the contemnors also changed the counsel and engaged Shri N.C. Pati and his associates to appear on their behalf. The order dated 27.6.2000 shows that on the said date Shri N.C. Pati and his associates filed vakalatnama. Even though their names had not been printed in the cause list on behalf of the contemnors in the writ application, in the Misc. Case the interim order was passed. Therefore, there was no possibility of printing the name of Shri N.C. Pati and his associates in the cause list on 27.6.2000 because they appeared on behalf of the contemnors only on that date. We are therefore unable to accept the

contention of the learned Counsel appearing for the contemnors that the order was not passed in the presence of their Advocates since Shri N.C. Pati and his associates filed vakalatnama in Court on the very same day on their behalf in the writ application. The copy of the order had not been communicated as it appears from the office note in the writ application and it is the specific stand of the contemnors that the said order had not been communicated to them by their newly engaged counsel also. There is nothing on record to show that the learned Counsel Shri Pati appearing for the contemnors, on the date the order was passed, had intimated about the order to the contemnors and it is specific stand of the contemnors that they were not communicated about the said order. Apart from the above, an objection was also raised by the contemnors stating that the contempt petition is barred by time. The order was passed on 27.6.2000 whereas the contempt petition was filed on 7.1.2004. If it is the case of the petitioner that the order was intimated to the contemnors through their counsel on the date the order was passed, the said contempt petition should have been filed within one year from the date of sale, but the same having been filed on 7.1.2004, is grossly barred by time.

4. In the case of Khemchand Agrawal v. Commissioner, Irrigation and Ors. 2004 OLR 151 reported in (2004) 27 OCR 513, this Court held that Section 20 of the Contempt of Courts Act, 1971 is to be construed strictly. Section 5 of the Limitation Act regarding condonation of delay is not applicable to a proceeding under the Contempt of Courts Act and, therefore, an application filed for initiation of contempt proceedings after expiry of the period of one year since the cause of action, is held not to be entertainable. We are therefore also of the view that the contempt application is grossly time barred.

5. Considering the fact that there is an injunction order restraining the contemnors from alienating the property and as a matter of fact there has been alienation of the disputed land, we are of the view that the direction of this Court passed in the contempt application directing the contemnors to deposit the sale price by way of cheque in this Court and renewing the same from time to time, in the facts and circumstances appears to be justified.

6. We, therefore, dispose of this contempt petition directing the contemnors to renew the cheques furnished before the Registry of this Court for a sum of Rs. 2,54,000/- from time to time till disposal of the writ application i.e. O.J.C. No. 5705 of 1999.

I. Mahanty, J.

7. I agree.